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EXAMINER: SHINGLETON, M.

ART UNIT: 252 | PAPER NUMBER: 9

DATE MAILED: 04/19/91

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on 2-11-91  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice re Patent Drawing, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, Form PTO-152
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.  PTO L-413

Part II SUMMARY OF ACTION

1.  Claims 14, 16 - 56 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2.  Claims 1-13 and 15 have been cancelled.

3.  Claims 16-56 are allowed.

4.  Claims 14 are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.

7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable;  not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been  approved by the examiner;  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed \_\_\_\_\_, has been  approved;  disapproved (see explanation).

12.  Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14.  Other

EXAMINER'S ACTION

Claim 14 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the prior art invention as set forth in claims 1-29 of U.S. Patent no. 4,866,349 ('349).

Claim 14 of the instant application is only different by a matter of wording over the claims of '349. In fact for example claim 12 of '349 discloses all the limitations of claim 14 almost to the exact words and only differs in that claim 12 of '349 is more specific. In other words claim 14 is more broad than claim 12 of '349.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of monopoly by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Applicant's arguments filed 2-11-91 have been fully considered but they are not deemed to be persuasive.

Applicant remarks that no double patenting exists between the instant applicant and that of the '349 patent in regards to claim 14 of the instant application, because '349 recites "...an ISA ac plasma panel which includes...". This argument is not persuasive. It may be true that claim 12 of '349 recites further limitations than that recited in the present claim 14, but the double patenting rejection recognized this fact. The rejection also stated that all the limitations of instant claim 14 are present in claim 12 of the '349 patent. In other words there is the issue of domination.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

SERIAL NO. 338,111

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Shingleton whose telephone number is (703) 308-0712. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 557-3311.

*MBS*  
Shingleton/mbs  
01 November 1990  
18 April 1991

*Eugene R. Laroche*  
EUGENE R. LAROCHE  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 252